

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

HERMAN LIPPERT AND GERTRUDE LIPPERT  
LIVING TRUST DATED AUGUST 8, 1991, a  
Florida trust, and ESTATE OF HERMAN  
LIPPERT,

Defendants.

Adv. Pro. No. 10-05113 (SMB)

**STIPULATION AND ORDER DISMISSING ADVERSARY PROCEEDING  
WITHOUT PREJUDICE**

**WHEREAS**, on December 2, 2010, Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et. seq.*, and the substantively consolidated estate of Bernard L. Madoff (“Madoff”) individually, filed a Complaint against Herman Lippert and Gertrude Lippert Living Trust Dated August 8, 1991 (the “Trust”), Estate of Herman Lippert (the “Estate”), Barbara Rosenbaum, as trustee, as personal representative, and as

an individual (“Rosenbaum”), Bruce Lippert (“Lippert”) and Marla Randall (“Randall”) (Adv. Pro. No. 10-05113 (SMB) (the “Action”); and

**WHEREAS**, the Trustee alleged that the defendants in the Action received certain avoidable transfers from BLMIS, among other claims; and

**WHEREAS**, defendants Rosenbaum, Lippert and Randall have been dismissed as parties to the Action and the Trust and Estate are the only defendants remaining in the Action;

**WHEREAS**, Barbara Rosenbaum, as trustee of the Trust and personal representative of the Estate, represents as follows:

1. Gertrude Lippert and Herman Lippert, my mother and father, established the Trust in 1991. My mother passed away in November, 1993, at which time my father became the sole trustee and immediate beneficiary of the Trust.

2. I became successor trustee of the Trust in April, 2006.

3. My father passed away in October, 2006. At the time of this death, all of my father’s assets were in the Trust. Thus, upon his death, there was no formal “Herman Lippert Estate” as all of his assets flowed to his beneficiaries through the Trust.

4. My mother and father had three children, myself (my married name is Rosenbaum), my brother Bruce Lippert, and my sister Marla (Lippert) Randall.

5. The Trust was distributed to myself and my siblings in October, 2007.

6. Neither the Trust or Estate had any assets at the time the Action was filed.

**IT IS THEREFORE MUTUALLY AGREED AND STIPULATED**, by and between the Trustee and Barbara Rosenbaum, as trustee of the Trust and personal representative of the Estate, as follows:

1. The representations in the foregoing “whereas” clauses shall be deemed material to this stipulation and agreement (this “Agreement”).

2. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and Fed. R. Bankr. P. 7041, the Trustee and defendants Trust and Estate hereby stipulate that this Action is dismissed without prejudice and without costs to any party.

3. Notwithstanding the foregoing, defendants Trust and Estate and the Trustee agree that, in exchange for the Trustee's entering into this Agreement and dismissing the Action, this Agreement shall also operate as, and is, a tolling agreement, whereby, if any of the representations in this Agreement are false, the Trustee shall be permitted to assert any avoidance and/or other claims available under the Bankruptcy Code or SIPA with respect to defendants Trust and Estate in connection with the BLMIS Account at issue in the Action, within six (6) months of such determination or other notice by the Trustee, notwithstanding section 546(a) of the Bankruptcy Code, and defendants Trust and Estate hereby agree to waive any statute of limitations defense in any such actions or claims commenced by Trustee.

4. This Agreement may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

5. Barbara Rosenbaum, as trustee of the Trust and personal representative of the Estate, has reviewed and discussed this Agreement with counsel.

(Remainder of page intentionally left blank.)

Dated: New York, New York  
May 16, 2014

Of Counsel:

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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and the Estate of Bernard L. Madoff*

HERMAN LIPPERT AND GERTRUDE  
LIPPERT LIVING TRUST DATED  
AUGUST 8, 1991

By: /s/ Barbara Rosenbaum  
Barbara Rosenbaum, Trustee

ESTATE OF HERMAN LIPPERT

By: /s/ Barbara Rosenbaum  
Barbara Rosenbaum,  
Personal Representative

BRIEF CARMEN & KLEIMAN, LLP

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*Attorneys for Defendants Herman Lippert and  
Gertrude Lippert Living Trust Dated August  
8, 1991 and Estate of Herman Lippert*

Dated: New York, New York  
May 19<sup>th</sup>, 2014

**SO ORDERED**

**By: /s/ STUART M. BERNSTEIN**  
**HONORABLE STUART M. BERNSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**